Supreme Court, U.S.
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No. 02-1044

IN THE

Supreme Court of the United States

JORGE LUIS MACHUCA GONZALEZ, *et al.*,

Petitioners,

v.

DAIMLERCHRYSLER CORPORATION, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

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22 pp

QUESTION PRESENTED

Did the Fifth Circuit correctly hold that there was no abuse of discretion in the district court's decision to conditionally dismiss, on *forum non conveniens* grounds, a suit by Mexican nationals involving a wreck with another Mexican national in Mexico and asserting product liability claims regarding a vehicle purchased in Mexico?

CORPORATE DISCLOSURE STATEMENT

DaimlerChrysler Corporation, formerly known as Chrysler Corporation, is wholly owned by DaimlerChrysler Motors Company, L.L.C., which is wholly owned by DaimlerChrysler North America Holding Corporation, which is wholly owned by DaimlerChrysler AG, which is publicly traded.

Autoliv ASP, Inc., formerly known as Morton International, Inc., is wholly owned by Autoliv, Inc., which is publicly traded.

On January 1, 2003, the automotive divisional assets and liabilities of the former TRW Inc. were transferred to TRW Automotive US LLC. Both TRW Automotive US LLC and TRW Vehicle Safety Systems Inc. are wholly owned by TRW Automotive Inc., which is privately owned.

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STATEMENT OF JURISDICTION

While the petition was filed timely, respondents asserted below that appeal to the court of appeals was not timely and filed a motion to dismiss on that basis. The Fifth Circuit denied the motion to dismiss without comment and respondents have not pursued the issue.

STATUTORY PROVISIONS INVOLVED

Appended to this brief are Tex. Civ. Prac. & Rem. Code sections 71.031, relied upon but miscited in the petition (pp. 3, 9), and 71.051, the Texas *forum non conveniens* statute.

REASONS FOR DENYING THE PETITION

A. Both lower courts properly followed and applied the law of *forum non conveniens* as set forth in *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981).

The trial court decided that Mexico was the appropriate forum for a suit by two Mexican citizens to recover damages for the death of their son, also a Mexican citizen, in an automobile accident caused by another Mexican citizen on a Mexican road. Petitioners asserted a defect in their vehicle, purchased from their long-time dealer located two blocks from Mr. Machuca's office in Mexico City, and chose to file their suit in Texas. The only connection with Texas ever shown was that Mr. Machuca window-shopped and test drove an earlier year's model of the same vehicle on a trip to Houston, with full knowledge that it would be illegal for him to buy a car in Texas for export to Mexico.[1]

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1. Petitioners did not sue any dealer, in Houston or elsewhere.

The district court's ruling was a legitimate exercise of its discretion. Both it and the Fifth Circuit faithfully followed the *forum non conveniens* analysis set forth in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947) and *Piper Aircraft*. Indeed, *Piper Aircraft* itself resolves every issue raised in the petition. The basic complaint is that the law of Texas provides a potentially greater monetary recovery than that of petitioners' home. This is true in most *forum non conveniens* cases: it is a rare plaintiff who chooses to sue in any forum other than that where he thinks his potential recovery is greatest. It was true in *Piper Aircraft* and this Court's express ruling was that a plaintiff may not defeat a motion to dismiss on *forum non conveniens* grounds: ". . . merely by showing that the substantive law that would be applied in the alternative forum is less favorable to the plaintiffs than that of the present forum." *Piper Aircraft*, 454 U.S. at 247.

The remedy provided by Mexico is quite similar to that provided by Scotland at the time *Piper Aircraft* was decided, and that remedy is what petitioners' own legislature has deemed appropriate. Like Scotland at the time (and like Michigan, where the vehicle in question was designed), Mexico does not recognize a strict product liability cause of action. Like Scotland, Mexico also places limits on the amount of recovery in a death action. University of Texas Law Professor Hans Baade explained in his affidavits in support of the motion to dismiss that Scotland's law, which limited recovery to "loss of support and society," typically resulted in awards of 1,000 pounds or less, and compared that with the Mexican law, which limits recovery to the value of two years of the decedent's wages or, in the case of a decedent who was not employed, two years of the minimum wage.

Mexico provides a remedy, there is no suggestion that petitioners would be treated unfairly in their own home courts, the defendants stipulated to amenability to process in Mexico, and dismissal was conditioned on defendants' waiver of any limitations or jurisdictional defenses. Pet. App. C., p. 30a. Under established law, Mexico is therefore an available and adequate alternate forum. Unless our federal courts are to become the moral arbiters of the adequacy of the remedies every sovereign in the world provides its own citizens, the established law should not be changed.

Petitioners appear to argue (Pet., p. 9) that Tex. Civ. Prac. & Rem. Code § 71.031(a)(4) (opening state courts to citizens of countries with equal treaty rights) entitles them to maintain their suit in Texas. They do not explain how a state statute could foreclose a federal court's authority to effect foreign transfers on *forum non conveniens* grounds. That authority derives from the court's inherent power to control the administration of justice in litigation pending before it and prevent its own process from becoming an instrument of abuse or oppression. *Baumgart v. Fairchild Aircraft Corp.*, 981 F.2d 824, 828 (5th Cir. 1993), *cert. denied*, 508 U.S. 973 (1993). In any event, petitioners' premise is faulty. While foreign nationals may institute suit in Texas courts if they meet the requirements of section 71.031, maintenance of such a suit is subject to the *forum non conveniens* analysis set forth in Tex. Civ. Prac. & Rem. Code § 71.051(a). That analysis is identical to the one set forth by this Court in *Gilbert*.

B. The opinion below creates no conflict between circuits.

The differences between the cases cited as conflicting — *Lehman v. Humphrey Cayman, Ltd.*, 713 F.2d 339 (8th Cir. 1983), *cert. denied*, 464 U.S. 1042 (1984); *Wilson v. Humphreys (Cayman), Ltd.*, 916 F.2d 1239 (7th Cir. 1990), *cert. denied*, 499 U.S. 947 (1991); and *Irish Nat. Ins. Co., Ltd. v. Aer Lingus Teoranta*, 739 F.2d 90 (2d Cir. 1984) — and this case are apparent. In both *Lehman* and *Wilson*, the plaintiffs were U.S. citizens, whose choice of a permissible forum is entitled to great weight in the *forum non conveniens* analysis. This is simply not true in the case of foreign nationals imposing on American courts for the purpose of evading the laws of their own home. *Piper Aircraft*, 454 U.S. at 249 n.15 & 255-6. In *Irish Nat'l*, all the disputed facts and evidentiary issues centered on Kennedy Airport, in the selected forum. Here, pertinent events or evidentiary issues have nothing to do with the Southern District of Texas. The wreck was in Mexico, the vehicle and components involved were not designed in Texas, the vehicle was manufactured in Canada, and the vehicle was purchased in Mexico, where it entered the stream of commerce, thereby giving Mexico the most significant interest in this case. *Mitchell v. Lone Star Ammunition, Inc.*, 913 F.2d 242, 250 (5th Cir. 1990); *Crisman v. Cooper Industries*, 748 S.W.2d 273, 277-78 (Tex. App. — Dallas 1988, writ denied).

The *forum non conveniens* analysis is highly fact sensitive. Each case is to be decided on its own facts and by weighing the private and public interest factors implicated by those facts. Given the plain difference in the dispositive facts between this case and those claimed to conflict, petitioners' contention lacks substance.

C. There is no policy justification for changing the law set forth in *Piper Aircraft*.

Petitioners argue (Pet., p. 9) that the interests of global markets and of holding domestic companies responsible for defective export products compel the conclusion that their suit should have proceeded in Texas. The arguments are empty. The latter argument was expressly rejected in *Piper Aircraft*, 454 U.S. at 260-61, and the former is no more than an invitation for the federal courts to become the forum for the world, sitting in judgment of the remedies provided by other nations. How an American ruling that Mexico's laws are not adequate remedies for its own citizens would help trade between the nations is a mystery. The First Circuit put it nicely in rejecting a similar argument in *Howe v. Goldcore Investments, Inc.*, 946 F.2d 944, 950 (1st Cir. 1991), *cert. denied*, 502 U.S. 1095 (1992):

> The growing interdependence of formerly separate national economies, the increased extent to which commerce is international, and the greater likelihood that an act performed in one country will affect citizens of another, all argue for expanded efforts to help the world's legal systems work together, in harmony, rather than at cross purposes. To insist that American courts hear cases where the balance of convenience and the interest of justice require that they be brought elsewhere will simply encourage an international forum-shopping that would increase the likelihood that decisions made in one country will cause (through lack of awareness or understanding) adverse effects in another, eroding uniformity or thwarting the aims of law and policy.

D. The public and private interest factors point unambiguously to Mexico.

Petitioners do not seem to contest the weighing by the district court of the traditional *forum non conveniens* factors. Nevertheless, with an abuse of discretion standard of review, it is worthy of note that the trial court properly stated, weighed, and discussed each of the *Gilbert* factors, concluding that none of them favored Texas as the more convenient forum and that virtually all plainly favored Mexico. Pet. App. C.

Among the more important factors in the trial court's analysis were:

- All but one of petitioners' twenty-seven to thirty witnesses were in Mexico. Pet. App. C., p. 24a.

- It was easier for American defense witnesses to travel to Mexico City than to Brownsville, Texas, the location of the trial court. *Id.*, p. 25a.

- The driver of the other car (against whom petitioners instituted legal action in Mexico) was not subject to process in Texas and could not be joined or subpoenaed to appear outside Mexico. *Id.*

- Mexican law would apply to the case, and would be more easily applied by a Mexican court. *Id.*, pp. 25a – 28a.

- The forum court's docket is notoriously congested already, largely with criminal cases arising along the international border. *Id.*, p. 28a.

- A Texas jury should not be burdened with deciding a case with no relationship to Texas and governed by Mexican law. *Id.*, p. 29.

It cannot be said that the district court did not analyze the appropriate factors, or that it abused its discretion in weighing those factors. The court of appeals properly affirmed that exercise of discretion, and there is nothing unique about this case justifying this Court's review. This is a Mexican case and belongs in a Mexican court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX — STATUTES INVOLVED

LIABILITY IN TORT **§ 71.031**
Title 4

SUBCHAPTER C. DEATH OR INJURY CAUSED BY ACT OR OMISSION OUT OF STATE

§ 71.031. Act or Omission Out of State

(a) An action for damages for the death or personal injury of a citizen of this state, of the United States, or of a foreign country may be enforced in the courts of this state, although the wrongful act, neglect, or default causing the death or injury takes place in a foreign state or country, if:

(1) a law of the foreign state or country or of this state gives a right to maintain an action for damages for the death or injury;

(2) the action is begun in this state within the time provided by the laws of this state for beginning the action;

(3) for a resident of a foreign state or country, the action is begun in this state within the time provided by the laws of the foreign state or country in which the wrongful act, neglect, or default took place; and

(4) in the case of a citizen of a foreign country, the country has equal treaty rights with the United States on behalf of its citizens.

(b) Except as provided by Subsection (a), all matters pertaining to procedure in the prosecution or maintenance of the action in the courts of this state are governed by the law of this state.

(c) The court shall apply the rules of substantive law that are appropriate under the facts of the case.

SUBCHAPTER D. FORUM NON CONVENIENS

§ 71.051. Forum Non Conveniens

(a) With respect to a plaintiff who is not a legal resident of the United States, if a court of this state, on written motion of a party, finds that in the interest of justice a claim or action to which this section applies would be more properly heard in a forum outside this state, the court may decline to exercise jurisdiction under the doctrine of forum non conveniens and may stay or dismiss the claim or action in whole or in part on any conditions that may be just.

(b) With respect to a plaintiff who is a legal resident of the United States, on written motion of a party, a claim or action to which this section applies may be stayed or dismissed in whole or in part under the doctrine of forum non conveniens if the party seeking to stay or dismiss the claim or action proves by a preponderance of the evidence that:

(1) an alternative forum exists in which the claim or action may be tried;

(2) the alternate forum provides an adequate remedy;

(3) maintenance of the claim or action in the courts of this state would work a substantial injustice to the moving party;

(4) the alternate forum, as a result of the submission of the parties or otherwise, can exercise jurisdiction over all the defendants properly joined to the plaintiffs claim;

(5) the balance of the private interests of the parties and the public interest of the state predominate in favor of the claim or action being brought in an alternate forum; and

(6) the stay or dismissal would not result in unreasonable duplication or proliferation of litigation.

(c) The court may set terms and conditions for staying or dismissing a claim or action under this section as the interests of justice may require, giving due regard to the rights of the parties to the claim or action. If a moving party violates a term or condition of a stay or dismissal, the court shall withdraw the order staying or dismissing the claim or action and proceed as if the order had never been issued. Notwithstanding any other law, the court shall have continuing jurisdiction for purposes of this subsection.

(d) A request for stay or dismissal under this section is timely if it is filed not later than 180 days after the time required for filing a motion to transfer venue of the claim or action. The court may rule on a motion filed under this section only after a hearing with notice to all parties not less than 21 days before the date specified for the hearing. The court shall afford all of the parties ample opportunity to obtain discovery of information relevant to the motion prior to a hearing on a motion under this section. The moving party shall have the responsibility to request and obtain a hearing on such motion at a reasonable time prior to commencement of the trial, and in no case shall the hearing be held less than 30 days prior to trial.

(e) The court may not stay or dismiss a plaintiff's claim under Subsection (b) if the plaintiff is a legal resident of this state. If an action involves both plaintiffs who are legal residents of this state and plaintiffs who are not, the court may not stay or dismiss the action under Subsection (b) if the plaintiffs who are legal residents of this state are properly joined in the action and the action arose out of a single occurrence. The court shall dismiss a claim under Subsection (b) if the court finds by a preponderance of the evidence that a party was joined solely for the purpose of obtaining or maintaining jurisdiction in this state and the party's claim would be more properly heard in a forum outside this state.

(f) A court may not stay or dismiss a claim or action pursuant to Subsection (b)

if a party opposing the motion tinder Subsection (b) alleges and makes a prima facie showing that an act or omission that was a proximate or producing cause of the injury or death occurred in this state. The prima facie showing need not be made by a preponderance of the evidence and shall be deemed to be satisfied if the party produces credible evidence in support of the pleading, which evidence need not be in admissible form and may include affidavits, deposition testimony, discovery responses, or other verified evidence.

(g) Any time limit established by this section may be extended by the court at the request of any party for good cause shown.

(h) In this section:

(1) "Legal resident" means an individual who intends the specified political subdivision to be his permanent residence and who intends to return to the specified political subdivision despite temporary residence elsewhere or despite temporary absences, without regard to the individual's country of citizenship or national origin. The term does not include an individual who adopts a residence in the

specified political subdivision in bad faith for purposes of avoiding the application of this section.

(2) "Plaintiff' means a party seeking recovery of damages for personal injury or wrongful death. In a cause of action in which a party seeks recovery of damages for personal injury to or the wrongful death of another person, "plaintiff" includes both that other person and the party seeking such recovery. The term does not include a counter-claimant, cross-claimant, or third-party plaintiff or a person who is assigned a cause of action for personal injury, or who accepts an appointment as a personal representative in a wrongful death action, in bad faith for purposes of affecting in any way the application of this section.

(i) This section applies to actions for personal injury or wrongful death. This section shall govern the courts of this state in determining issues under the doctrine of forum non conveniens in the actions to which it applies, notwithstanding Section 71.031(a) or any other law.